

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-091554

01/03/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

LMA PROPERTIES LLC

SCOTT E WILLIAMS

v.

MARC FISHER, et al.

THOMAS N PAYNE

REMAND DESK CV-CCC  
SOUTH MESA-GILBERT JUSTICE  
COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In the case at hand Appellee filed a forcible detainer complaint in the South Mesa/Gilbert Justice court,<sup>1</sup> seeking damages and back rents owed by Appellant. The judgment was granted in Appellee's favor. Appellant argues that Appellee did not have title to the home in question. The issue of title is irrelevant and will not be addressed, for this is a simple case of non-payment of rents. It is well settled that a tenant may not withhold rents for any reason not authorized by statute.<sup>2</sup>

The record shows that Appellant failed to pay the back rents within 5 days of receiving Appellee's notice. Hence, Appellee was entitled to file the forcible detainer action, pursuant to

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<sup>1</sup> Pursuant to A.R.S. §33-1377.

<sup>2</sup> A.R.S. §33-1368(B).

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A.R.S. §33-1368(B). Further, Appellant must pay all damages related to the non-compliance of the terms of the lease.<sup>3</sup>

The final issue brought by Appellant concerns the Arizona Consumer Fraud Act. Appellee correctly argues that this issue was neither raised nor argued at trial and is therefore precluded from being argued on appeal. Appellate courts cannot consider issues and theories not presented to the trial courts.<sup>4</sup> A failure to raise such issues to the trial court constitutes a waiver of the issues.<sup>5</sup>

Nothing in the record suggests that the lower court erred in finding for Appellee. Substantial evidence exists to support the action of the lower court.

IT IS THEREFORE ORDERED affirming the decision of the South Mesa-Gilbert Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the South Mesa-Gilbert Justice Court for all further, if any, and future proceedings.

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<sup>3</sup> A.R.S. §33-1368(C).

<sup>4</sup> *Richter v. Dairy Queen of Southern Arizona, Inc.*, 131 Ariz. 595, 643 P.2d 508 (Ariz. App. 1982); *Stewart v. Mutual of Omaha Ins. Co.*, 169 Ariz. 99, 817 P.2d 44 (Ariz. App. 1991).

<sup>5</sup> *Van Loan v. Van Loan*, 116 Ariz. 272, 569 P.2d 214 (Ariz. 1977).